



Western failed to include factual allegations that plausibly suggest a claim for relief against HLS in support of its claims, including Count III (alleged Texas Insurance Code Chapter 541 violations), Count IV (alleged Texas Insurance Code Chapter 542 violations), Count V (alleged Texas DTPA violations), and Count VI (negligence allegations). [Doc 1-3 at ¶¶ 8-12]. Moreover, Western's conclusory allegations and formulaic recitation of alleged statutory violations does not state any claims upon which relief can be granted. Thus, Westerns' claims should be dismissed with prejudice.

Furthermore, Western's claims in Count VII (exemplary damages) and Count VIII (attorney's fees) require Western to prevail on a claim for affirmative relief as a predicate to recovery. These claims automatically fail since Western's claims against HLS are unsupported. Based upon the foregoing, a dismissal of all claims asserted against HLS is proper under FRCP 12(b)(6).

## II. PRAYER

HLS requests that the Court grant its *Motion to Dismiss under Rule 12(b)(6)* and dismiss Western's claims against it with prejudice, and for any other relief to which HLS may be entitled.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

This is to certify that on March 7, 2016, a true and correct copy of the foregoing was sent via ECF electronic service to the following counsel of record:

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